3914

SUPREME COURT OF THE UNITED STATES.

No. 117.

JOHN D. BRADFORD & BENJAMIN M. BRADFORD, APPELLANTS,

vs.

THE PRESIDENT, DIRECTORS, & COMPANY OF THE UNION BANK OF TENNESSEE.

APPEAL FROM THE DISTRICT COURT OF THE U. S., FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

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GIDEON, print.

Exemplification.

J. D. and B. M. Bradford
vs.
The President, Directors & Co. of the Union Bank of Tennessee.

Pleas had at a district court of the United States, for the northern district of Mississippi, began and held in the town of Pontotoc, in said district, on the first Monday of December, A. D. 1848.

Present, the honorable Samuel J. Gholson, judge of said court.

Be it remembered, that, on the 8th day of November, A. D. 1848, John D. Bradford, of the county of Pontotoc, and Benjamin M. Bradford, of the county of Monroe, and citizens of the said northern district, filed in the office of the clerk of the district court of the United States, for the said district, their certain bill of complaint, in the words and figures following, to wit:

The United States of America, to the hon. Samuel J. Gholson, judge of the district court of the United States, for the northern district of the State of Mississippi.

John D. Bradford, of the county of Pontotoc, and Benjamin M. Bradford, of the county of Monroe, and citizens of the said northern district, bring this their bill against the President, Directors, and Company of the Union Bank of the State of Tennessee, the President, Directors, and Company of said Bank being citizens of the State of Tennessee and resident therein; said bank being located at Nashville, in said State; and thereupon your orators complain and say: That your orator, John D. Bradford, on the 9th day of January, 1845, purchased of the said President, Directors, and Company of the said Union Bank of the State of Tennessee the following sections of land, to wit: Section No. twelve, of township No. seven, of range No. five east, of the basis meridian, of the Chickasaw cessions; section No. two, of township No. five, of range No. six east, at and for the sum of thirty-seven hundred and forty-one dollars, payable as hereinafter stated. That, to secure the payment of said sum of money agreed to be given for said two sections of land at the time of said purchase, your orator, John D., executed his three writings obligatory with your orator, Benjamin M. Bradford, as security thereto, which were delivered to the said President, Directors, and Company of the Union Bank of the State of Tennessee, payable as follows, to wit: One due the 12th day of October, 1845, for the sum of eleven hundred and eighty dollars and nineteen cents; one other, due the 12th day of October, 1846, for the sum of twelve hundred and forty-seven dollars; one other, due the 12th day of October, 1847, for the sum of thirteen hundred and thirteen dollars and eighty-one cents.

That, at the same time, John M. Bass, the president of said bank, and J. Corry, the cashier of said bank, and for the said Union Bank, executed and delivered to your orator, John D., a writing obligatory, commonly called a title bond, binding the said bank to make to your orator, John D. Bradford, a good and valid title to said sections of land, upon the conditions therein stated—a copy of which is herewith filed, marked exhibit A, and prayed to be taken as a part of this bill; the original will be produced at the hearing.

Your orators further state and show unto your honor, that the said President, Directors, and Company of said Union Bank brought suit upon said writing obligatory, in the district court of the United States, for the northern district of Mississippi, to the December term, 1847; and at the June term, 1848, of said district court, obtained a judgment against your orators for the sum of thirty-seven hundred and forty-one dollars debt, and three hundred and seventy-two dollars nineteen cents damages, and also the costs in that behalf expended; that the said President, Directors, and Company have ordered out an execution, and are now endeavoring to enforce the collection of said judgment, and will do so unless restrained by your honor, and which is oppressive to your orator.

Your orators further state and show unto your honor, that your orator, John D. Bradford, was induced to make said purchase of the President, Directors, and Company of said Union Bank, under the opinion and belief that the said President, Directors, and Company of the Union Bank of the State of Tennessee were seized of, and had the legal title to, the said sections of land at the time of said purchase, and that they would be able to comply with the conditions of their said bond; and the said President, Directors, and Company of said Union Bank so represented to your orator, John D., at the time of the making of said contract, that, confiding in the representations of the President, Directors, and Company of the said Union Bank, *that* they were seized of, and had the legal title to, said sections of land, your orator, John D., made said purchase upon the terms and conditions stated in the exhibit A, in the bill mentioned.

Your orator, John D. Bradford, further states and shows unto your honor, that his purchase of said sections was one entire contract, and your orator would not have purchased either one of said sections without the other, nor would he have purchased one, and any portion of the other, or any portion of either of said sections, without the whole of both; that section twelve is more than an average section compared with the other. At the time of said purchase your orator had no knowledge that the title of the said President, Directors, and Company of the said Union Bank to any portion of either of said sections of land was defective, or that any closed or adverse claim was set up to the same, or to any part thereof, which your orator has since ascertained to be the fact, and which was carefully concealed from your orator by the said President, Directors, and Company of the said Union Bank at the time of said purchase, though known to them at the time.

3910.

Your orators further state and show unto your honor, that on the northwest quarter of section twelve aforesaid, there was an improvement, and about fifty acres of cleared land, of the yearly value of about one hundred dollars, which was then adversely held to the said defendant by one Hughs, who still holds the same; that on said section No. 2 there was a dwelling-house and other out-houses, and about forty or fifty acres of cleared land, of the yearly value of one hundred dollars, or thereabouts; that one main inducement your orator had for making the said purchase, was the improvement on said lands, and the value those improvements gave to the said lands over wild lands unimproved, and rendered them more available and sure of sale; the said lands being purchased by your orator, John D. Bradford, with the view to their immediate re-sale.

Your orators further state and show unto your honor, that at the time of the purchase of said lands by your orator, John D., both of said sections, except the northwest quarter of twelve, had been sold for the taxes due thereon to the State of Mississippi, and the county in which said lands lay. Section No. twelve, except as above excepted, had been sold by the tax collector of Pontotoc county, and was purchased by one William Y. Gholson, now a citizen of the State of Ohio, and others; that they have the tax collector's deeds for the same, and which are recorded in the office of the clerk of the probate court of the county of Pontotoc, and the time given for redeeming the same has long since expired, and the title under said tax collector's deed has become perfect as to the east half and southwest quarter of said section No. twelve; a certified copy of which is herewith filed, marked exhibit B, and which, with the certificates thereon, your orators pray may be made a part of this bill; that said section No. two had been sold on the day of 1843, for the taxes due thereon for the year 1842, and was bid off for the State of Mississippi by the tax collector of Tishemingo county, which your orators are informed has been very recently redeemed by the said President, Directors, and Company of the Union Bank of the State of Tennessee; that all of said sales, deeds, and incumbrances were unknown to your orators at the time of said purchase, and were deceitfully concealed from your orator, John D., by the said President, Directors, and Company of the Union Bank of the State of Tennessee, although the same was known to them at the time of said sale.

Your orators further state and show unto your honor, that at the time of said purchase the said sections of land were held under color of title adversely to the said President, Directors, and Company of the Union Bank of the State of Tennessee; that said lands were so adversely held by them in possession thereof, which was wholly unknown to your orators at the time of said purchase; that the fact of such adverse possession and title was wilfully concealed from your orators by the said President, Directors, and Company of the said Union Bank, although the same was at the time well known to them; that the persons in possession of said lands at the time of said purchase, or those claiming under them, have hitherto, and still continue to hold possession of the said lands,

and have hitherto and still do continue to enjoy the same, and receive the rents and profits thereof; that your orators have been thus kept out of the possession of the said lands, and prevented from deriving any advantage or benefit of the said purchase, and has wholly defeated the sale of said lands by your orator, John D. Bradford.

Your orators further state and shew unto your honor, that the said President, Directors, and Company of the Union Bank of the State of Tennessee failed to pay the State and county tax due upon said lands for the year 1842; that your orators are advised, and so charge, that it was the duty of the said President, Directors, and Company of the Union Bank of the State of Tennessee to pay the said taxes, and prevent the sale of said lands therefor; that your orators did not discover the defects in the title of the said President, Directors, and Company of the Union Bank of the State of Tennessee, until your orator, John D. Bradford, went to take possession of said lands after his said purchase; that your orators have tendered the amount of said judgment, with the interest due thereon, to the attorney of record of the said President, Directors, and Company of the Union Bank of the State of Tennessee, (the tender being made to him by the consent of the said bank,) and demand a good and valid title to said sections of land, but which was refused by the said attorney; that your orators are still willing, and now offer, to pay the said President, Directors, and Company of the Union Bank of the State of Tennessee the amount of said judgment, with all interest and costs, and herewith tender the same into court, and to accept a good and valid title to said sections of land, if they can make the same; but which your orators are informed they cannot do.

You orators therefore pray your honor to grant an injunction, restraining the said President, Directors, and Company of the Union Bank of the State of Tennessee, their agents, and *and* attorneys, from enforcing the collection of said judgment against your orators. And your orators further pray, that the said President, Directors, and Company of the Union Bank of the State of Tennessee be compelled to exhibit to your honor their title to the said lands, shewing a perfect chain thereto under the provisions of the Chickasaw treaty; that the title be made to your orator, John D., be submitted to your honor, together with the title bond to your orator; that the said President, Directors, and Company of the Union Bank of the State of Tennessee, be required to execute said contract specifically, by making a good and valid title to the whole of said two sections of land to your orator, John D.; that an account may be taken between them of the rents and profits of said lands since said purchases, and that the said Union Bank be compelled to account to your orator for the amount thus ascertained to be due.

And your orators further pray, that, if it shall appear to your honor, *that* the said President, Directors, and Company of the Union Bank of the State of Tennessee are unable to execute and perform their part of the said contract specifically and entire, that the said con-

tract may be wholly cancelled, annulled, and made void; that the injunction may be made perpetual.

Your orators further pray, that the said President, Directors, and Company of the Union Bank of the State of Tennessee, the said John M. Bass, the president thereof, and J. Corry, the cashier thereof, be made parties defendants to this your orators' bill of complaint; that a subpœna be granted against the said defendants, requiring them to appear and answer this bill.

And your orators further pray, that, if the specific relief herein before prayed cannot be granted, that such other or further relief be granted unto your orators as may be consistent with equity, and the nature of their case may *be* require.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note here under written they are respectively required to answer; that is to say—

1st. Whether the said President, Directors, and Company of the Union Bank of the State of Tennessee did not, on the 9th day of January, 1845, make the contract, with the said John D. Bradford, for the sale to him of said two sections of land, for the price, and upon the terms stated in the bill; and is not exhibit A a copy of the title bond executed by them?

2. Whether there were not valuable improvements and cleared land on both of said sections of land; and whether the improvements and cleared land, on each of said sections, were not of the yearly value of one hundred dollars?

3. Whether said sections of land, at the time of said sale to your orator, John D., had not been sold for the taxes, and purchased as charged in said bill; and whether the title of the said defendants was not encumbered by the said tax sales; and has not the title to the east half, and the southwest quarter, of section No. twelve become perfect under said tax sales?

4. Whether the said President, Directors, and Company, and the said John M. Bass and J. Corry, or either of them, did not know, at the time of said sale, that said lands had been sold for the taxes; and did they communicate such knowledge to the said John D.; and did they pay the taxes due upon said lands for the year 1842; if not, did they not conceal such fact from the said John D. Bradford?

5. Whether the said sections of land have been redeemed from the purchasers at the said tax sales; if so, at what time; and if both or either of said sections, or any part of either, have not been redeemed, which *which* section, or what part has not been redeemed; and of what value is the part of either or both of said sections which has not been redeemed?

6. Whether the said lands were encumbered at the time of said sale; and whether the said sections of land were not in the adverse possession of others at the time; and whether they are not now in the adverse possession of said lands; and do they not hold adverse to the title of the defendants?

7. Whether the said defendants did not know of such adverse possession at the time of the said sale to your orator, John D.; and did they, or either of them, inform the said Bradford of that fact?

8. Whether the said President, Directors, and Company of said Union Bank have ever been, since the making of said title bond, or are now able to make, to the said John D., a good, perfect, and unencumbered title to said lands, according to the condition of said bond?

9. Whether the said President, Directors, and Company of the Union Bank of the State of Tennessee, have not obtained a judgment against the said complainants, at the time, and for the amount stated in the bill, and are they not now attempting the collection of the same?

10. Whether the said complainants have not offered to perform their part of the agreement, by a tender of the money due thereon, and a demand upon the said defendants for a deed to said sections of land?

11. Whether the said John D. has not, on his own part, and for his co-complainant did not tender to the attorney of record, in the said suit mentioned in this bill, the full amount of the money due on said judgment, as specified and set forth in exhibit C, attached to this interrogatory?

GOODWIN & SALE, and
T. J. WORD,
Solicitors for complainant.

THE STATE OF MISSISSIPPI,
Northern district of said State.

This day, before me, Samuel J. Gholson, judge of the district court of the United States, for the northern district of the State of Mississippi, personally came the aforesaid John D. Bradford, who made oath, in due form of law, that the facts and allegations stated and set forth in the foregoing bill of complaint, as of his own knowledge, are true, and those stated as on the information of others, he believes.

J. D. BRADFORD.

Sworn to and subscribed, before me, this 28th day of Oct., 1848.

S. J. GHOLSON.

Exhibit "A" in complainants' bill.

Know all men by these presents, that the President, Directors, and Company of the Union Bank of Tennessee, are held and firmly bound unto John D. Bradford, of the State of Mississippi, in the penal sum of four thousand dollars; which payment, well and truly to be made, the said President, Directors, and Company bind themselves and their successors in office.

In testimony whereof, John M. Bass, the president of said bank, and J. Corry, cashier, have hereunto set their hands and seals, the 9th January, 1845.

The condition of the above obligation is such, that whereas the said President, Directors, and Company have sold unto the said John D. Bradford the following described land, to wit: Section twelve, township seven, range five east, in Pontotoc county; and section two, township five, range six east, in Tishemingo county; and said Bradford, having executed his three several notes in connexion with B. M. Bradford, as joint, drawn for the following amounts and payable at the following times, to wit, one for $1,180 19, payable on the 12th of October next; one for $1,247, payable on the 12th of October, 1846, and one [for] $1,313 81, payable on the 12th October, 1847. Now, if all the above mentioned notes, so executed, shall have been paid off, the said President, Directors, and Company shall make to the said John D. Bradford, or his legal representatives, on demand made by the said Bradford on them, a good and valued title to the above described lands, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed the day and year above written.

JOHN M. BASS, [SEAL]
President of Union Bank.
J. CORRY, [SEAL]
Cashier.

District chancery court, of the State of Mississippi, at Holly Springs.

I, Hannibal Harris, clerk of said court, certify, that the within bond is a true copy of the original on file in my office, in the suit of John D. Bradford against the Union Bank of Tennessee, John M. Bass, and J. Corry.

[L. S.] Given under my hand and the seal of our said court, this 26th September, 1848.

HANNIBAL HARRIS, *Clerk.*

Exhibit "B" in complainant's bill, consisting of three tax deeds.

Deed. T. H. Vaughan, T. C., to William Y. Gholson.

This deed of conveyance, made this twenty-third day of February, in the year eighteen hundred and forty-three, between Thomas H. Vaughan, collector of taxes for the year eighteen hundred and forty-two, in and for *for* the county of Pontotoc and State of Mississippi, of the first part, and William Y. Gholson, of said county, of the second part, witnesseth: That whereas an assessment of taxes for the State and county aforesaid, against John L. Brown, a non-resident of said county, for the year eighteen hundred and forty-two, amounting to the sum of one dollar and seventy-five cents, to wit, one dollar and —— cents for taxes due the State, and —— dollars and seventy-five cents for taxes due the said county, came into the hands of the said Thomas H. Vaughan, as collector aforesaid, for collection; and the said Thomas

H. Vaughan, collector as aforesaid, after the said assessment came into his hands for collection, having duly demanded of the said John L. Brown payment thereof, and the said taxes remaining due and unpaid on the 15th day of November, in the year eighteen hundred and forty-two, and the said John L. Brown having no personal property whereon to levy for the payment of said taxes or either of them; and the said Thomas H. Vaughan, collector as aforesaid, having given due notice thereof, did on the twenty-third day of February, eighteen hundred and forty-three, at the door of the court-house of the county aforesaid, between the hours of eleven o'clock, a. m., and three o'clock, p. m., proceed to sell at public auction to the highest bidder, as the property of the said John L. Brown, for the taxes and costs of sale due on the same, the following described lands, to wit, the east half of section No. twelve, of township No. seven, of range No. five east, of the basis meridian, in the Chickasaw cession, Mississippi; at which said sale the said William Y. Gholson, having bid the sum of nine dollars and seventy-one cents, that being the amount of said taxes, and the costs of said sale; and the said William Y. Gholson, being the highest and best bidder for said land, then and there became the purchaser thereof.

Now know ye, that I, the said Thomas H. Vaughan, collector as aforesaid, in consideration of the last mentioned sum, to me in hand paid by the said William Y. Gholson, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said William Y. Gholson, his heirs and assigns, all the above described lands, with the improvements thereon and the appurtenances thereunto belonging; to have and to hold the same to the said William Y. Gholson, his heirs and assigns, forever; subject, nevertheless, to the right which the said John L. Brown has by law to redeem the same.

In testimony whereof I have hereunto set my hand and affixed my seal as tax collector aforesaid, the day and year first above written.

T. H. VAUGHAN, [L. S.]
Collector of taxes.

Tax collector's sale for the taxes of eighteen hundred and forty-two.

I will offer for sale, for cash, in front of the court-house door in the town of Pontotoc, Pontotoc county, and State of Mississippi, on Thursday, the 23d day of February, 1843, the following tracts of land, or so much as will be sufficient to satisfy the State and county tax imposed on said lands for the year 1842, together with all costs on said lands, to wit, east half of section twelve, T. seven, range five, granted to John L. Brown, and assessed as his lands; amount due $1 77 cents. The above lands will be offered for sale at the time and place above mentioned, between the hours of 11 a. m. and 3 p. m., until all the lands *is* sold, or the taxes paid on said lands, this 21st day of November, 1842.

T. H. VAUGHAN, *T. C., P. C.*

THE STATE OF MISSISSIPPI,
Pontotoc county.

Personally appeared before me, Randolph Mitchel, a justice of the peace in and for said county, W. W. Leland, the publisher of a weekly newspaper called the Southern Tribune, printed in the town of Pontotoc, and makes oath that an advertisement, of *the* which the above is a true copy, was inserted weekly nine times in said newspaper before the said 23d day of February, 1843.

W. W. LELAND, *Publisher.*

Sworn to and subscribed before me, this 27th day of February, A. D. 1843.

Witness my hand and seal.

R. MITCHEL. [L. S.]

THE STATE OF MISSISSIPPI,
Pontotoc county.

Personally appeared before me, John A. McNeil, clerk of the probate court of said county, Thomas H. Vaughan, who acknowledged that he signed, sealed, and delivered the foregoing deed on the day and year therein mentioned as his act and deed.

Given under my hand, and the seal of said court affixed, the 24th day of February, 1843.

J. A. McNEIL, *Clerk.*

The deed of which the *next* foregoing is a true copy, was received in my office for record the 11th day of June, 1845, and duly recorded this 12th day of June, 1845.

J. A. McNEIL, *Clerk.*

THE STATE OF MISSISSIPPI,
Pontotoc county, ss:

I, John A. Formwalt, clerk of the probate court of said county and State aforesaid, do hereby certify, that the within contains a true and perfect copy of a deed made by Thomas H. Vaughan, tax collector of said county, to Wm. Y. Gholson, as the same remains on file and of record in my said office, on record book No. 5, on pages 396, 397, and 398.

Given under my hand and the seal of said court, at office, this the [L. S.] 11th day of November, 1848.

J. A. FORMWALT, *Clerk.*

Deed—T. H. Vaughan, collector, to Drake and Edmondson.

This deed of conveyance, made this twenty-second day of July, in the year eighteen hundred and forty-three, between Thomas H. Vaughan, collector of taxes for the year eighteen hundred and forty-two, in and for the county of Pontotoc, and State of Mississippi, of the first part, and James W. Drake and Robert W. Edmondson of the se-

cond part, witnesseth: That, whereas, an assessment of taxes for the State and county aforesaid, against M. Hughs, for the year eighteen hundred and forty-two, amounting to the sum of two dollars and fourteen cents, to wit, one dollar and twenty-three cents for taxes due the State, and dollars and ninety-one cents for taxes due the said county, came into the hands of the said Thomas H. Vaughan, as collector aforesaid, for collection; and the said Thomas H. Vaughan, collector as aforesaid, after the said assessment came into his hands for collection, having duly demanded of the said M. Hughes payment thereof, and the said taxes remaining due and unpaid on the 15th day of November, in the year eighteen hundred and forty-two, and the said M. Hughes having no personal property in said county whereon to levy for the payment of said taxes, or either of them; and the said Thomas H. Vaughan, collector as aforesaid, having given due notice thereof, did, on the twenty-second day of July, eighteen hundred and forty-three, at the door of the court-house of the county aforesaid, between the hours of eleven o'clock, a. m., and three o'clock, p. m., proceed to sell at public auction, to the highest bidder, as the property of the said M. Hughes, for the taxes and costs of sale due on the same, the following described lands, to wit, the southwest quarter of section (No. 12) twelve, in township (No. 7) seven, of range (No. 5) five, east of the basis meridian, according to the survey of the Chickasaw cession; at which said sale the said Drake and Edmondson having bid the sum of fourteen dollars and sixty cents, that being the amount of said taxes and the costs of said sale; and the said Drake and Edmondson, being the highest and best bidders for said land, then and there became the purchasers thereof. Now know ye, that I, the said Thos. H. Vaughan, collector as aforesaid, in consideration of the last mentioned sum, to me in hand paid by the said Drake and Edmondson, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, to the said Drake and Edmondson, their heirs and assigns, all the above described lands, with the improvements thereon and the appurtenances thereunto belonging; to have and to hold the same to the said Drake and Edmondson, their heirs and assigns, forever; subject, nevertheless, to the right which the said M. Hughes has, by law, to redeem the same.

In testimony whereof I have hereunto set my hand and affixed my seal, as tax collector aforesaid, the day and year first above written.

T. H. VAUGHAN, [L. S.]
Collector of taxes.

Tax collector's sale.

I will offer for sale, to the highest bidder, for cash, before the court-house door, in the town of Pontotoc, Pontotoc county, on the 22d day of July next, between eleven o'clock, a. m., and three o'clock, p. m., the southwest quarter of section twelve, town. seven, range

five east, granted to M. Hughes and assessed as his property, or so much thereof as may be sufficient to pay $2 14 cents, the State and county tax due thereon for the year 1842, and all costs.

T. H. VAUGHAN,
Tax collector.

Pres. fee $7 00.
April 19, 1843.

THE STATE OF MISSISSIPPI, *Pontotoc county.*

Personally appeared before me, Randolph Mitchell, a justice of the peace in and for the said county, W. W. Leland, the publisher of a weekly newspaper, called the Southern Tribune, printed in the town of Pontotoc, and makes oath that the above attached advertisement was inserted weekly for thirteen weeks in said newspaper, before the said twenty-second day of July, 1843.

W. W. LELAND, *Publisher.*

Sworn to and subscribed before me, this 26th day of July, A. D. 1843.

R. MITCHEL, [SEAL.]
Justice of the peace.

THE STATE OF MISSISSIPPI, *Pontotoc county.*

Personally appeared before me, John A. McNeil, clerk of the probate court of said county, T. H. Vaughan, who acknowledged that he signed, sealed, and delivered the foregoing deed as his act and deed, for the purposes therein set forth, on the day of the date thereof.

Given under my hand, and the seal of the said court affixed, this the 26th day of July, A. D. 1843.

J. A. McNEIL, *Clerk,*
By W. E. McNEIL, *Deputy.*

The deed of T. H. Vaughan to Drake and Edmondson, of which the next foregoing is a true copy, was filed in my office for record on the 27th day of July, 1845, and was this day duly recorded, this the 1st day of August, A. D. 1845.

J. A. McNEIL, *Clerk,*
By W. E. McNEIL, *Deputy.*

THE STATE OF MISSISSIPPI, *Pontotoc county, ss:*

I, John A. Formwalt, clerk of the probate court of said county, do hereby certify, that the within contains a true and perfect transcript of the deed made by T. H. Vaughan, tax collector, to Drake and Edmondson, as the same remains on record in my said office in deed book No. 5, on pages 436 and 437.

Given under my hand and seal of said court, at office, this the 11th [SEAL.] day of November, A. D. 1848.

J. A. FORMWALT, *Clerk.*

Deed to S. Hughes.

I, Samuel J. High, sheriff and tax collector for the county of Pontotoc, State of Mississippi, have this day, according to law, sold the following tract of land, to wit: The northwest quarter of section twelve, in township seven, range five, east of the basis meridian, according to the plan of survey of the Chickasaw cession, as the property of M. Hughes, for the taxes due thereon for the year 1845, to wit, the sum of three dollars and sixty-seven cents; when Singleton Hughes, being the best bidder at the sum of six dollars and seventeen cents, I therefore sell and convey said land to the said Singleton Hughes, his heirs, &c., forever.

Given under my hand and seal, this the 23d day of February, A. D. 1846.

S. J. HIGH, [SEAL.]
Sheriff and tax collector.

THE STATE OF MISSISSIPPI,
Pontotoc county, ss:

Personally appeared before me, John A. McNeil, clerk of the probate court of ——— S. J. High, who acknowledged that he signed, sealed, and delivered the foregoing deed for the purposes therein set forth as his act and deed.

Given under my hand, and the seal of said court affixed, this the 26th day of February, 1846.

J. A. McNEIL, *Clerk.*

The deed, of which the foregoing is a true copy, was filed in my office for record, this the 8th day of April, A. D. 1848.

J. A. FORMWALT, *Clerk.*

THE STATE OF MISSISSIPPI,
Pontotoc county, ss:

I, John A. Formwalt, clerk of the probate court of said ———, do hereby certify, that the foregoing page contains a true and perfect transcript of the deed as fully and completely as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and the seal of said court, at office, the 16th day of October, A. D. 1849.

[SEAL.] J. A. FORMWALT, *Clerk,*
By B. C. EARLE, *Deputy Clerk.*

Exhibit "C," in complainants' bill.

I hereby acknowledge that John D. Bradford made a tender to me, as the attorney of record of the Union Bank of Tennessee, of the full amount of a judgment obtained in the district court of the United States, for the northern district of the State of Mississippi, at Pontotoc,

on the 6th June, 1848, for the sum of $3,741 00 debt, and damages $372 19, besides costs, and demanded of me as said attorney, as a condition in said tender, a good and valid deed, and cleared of encumbrances, the following described tracts of land, admitted to be the consideration of the notes upon which said judgment is founded, to wit, section 2, of township five, of range 6 east, of the basis meridian, in Tishemingo county; and section 12, of township 7, range 5 east, in Pontotoc county, State of Mississippi; said John D. Bradford also tendered to me the one-half amount of said judgment, in payment of section 2, of township 5, of range 6, provided said bank would rescind the contract as to section 12, township 7, range 5, to which he alleges said bank has not now *now* a good and valid title; and I refuse to receive the money so tendered, upon the ground that, as the attorney at law of the Union Bank of Tennessee, I had no authority to comply with the conditions upon which the tender was made.

WM. F. STEARNS,
Attorney for the Union Bank of Tenn.

Sept. 22, 1848.

Fiat of judge on said bill.

To the clerk of the district court of the United States, for the northern district of Mississippi: Let injunction and subpœna issue as prayed for, upon the complainants entering into bond with John Goodwin, as their security, in a penalty equal to double the amount of the judgment at law, conditioned according to law.

Given under my hand this 28th day of October, A. D. 1848.

S. J. GHOLSON,
Judge U. S. district court, for Mississippi.

Injunction bond.

Know all men by these presents, that we, John D. Bradford, of the county of Pontotoc and State of Mississippi, and Benjamin M. Bradford, of the county of Monroe, [in] said State, as principals, and John Goodwin, as surety, are hereby held and firmly bound, unto the President, Directors, and Company of the Union Bank of the State of Tennessee, in the penal sum of eight thousand five hundred dollars; for the payment of which we bind ourselves, jointly and severally, by these presents. Sealed with our seals, and dated this 28th day of October, A. D. 1848.

The condition of the above obligation is such, that whereas the above bounden John D. Bradford and Benjamin M. Bradford have, by their bill of complaint, filed in the district court of the United States, for the northern district of the State of Mississippi, prayed for and obtained an injunction of a judgment rendered in and by said court, at the June term thereof, 1848, in favor of said President, Directors, and Company of the Union Bank of the State of Tennessee, against the said John D. Bradford and Benjamin M. Bradford, for the sum of thirty-

seven hundred and forty-one dollars debt, and three hundred and seventy-two dollars and nineteen cents damages, besides costs. Now, if the said John D. Bradford and Benjamin M. Bradford shall pay all money and costs, due or to become due on said judgment, to the said President, Directors, and Company of the Union Bank of the State of Tennessee, and also all such costs and damages as shall be awarded against them, the said Bradfords, in case said injunction shall be dissolved, then this obligation to be null and void, else to remain in force and virtue.

JOHN D. BRADFORD, [SEAL.]
B. M. BRADFORD, [SEAL.]
JOHN GOODWIN. [SEAL.]

Endorsements: "I approve of the above bond and security."
October 28th, 1848.

S. J. GHOLSON,
Judge, U. S. D. C., for Miss."

"Filed, Nov. 8th, 1848.

G. M. RAGSDALE, *Clk.*"

Injunction.

THE UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the President, Directors, and Company of the Union Bank of Tennessee, its counsellors, attorneys, and agents, greeting:

Whereas it has been represented to us, in our district court, for the northern district of Mississippi, in chancery sitting, on the part of John D. Bradford and Benjamin M. Bradford, complainants, that they have lately exhibited their bill of complaint against you, the President, Directors, and Company of the Union Bank of Tennessee, defendants, to be relieved touching the matters in said bill contained: We, therefore, in consideration of the premises, and of the allegations in said bill contained, strictly enjoin and command you, the said President, Directors, and Company of the Union Bank of Tennessee, under the penalty of $8,224 38 dollars, to be levied of your goods and chattels, lands and tenements, to our use, that you absolutely refrain from further prosecuting a certain writ of fieri facias, now in the hands of the marshal of the no. dist. Mi., in your favor against said compl'ts, and from any further proceedings against the said complainants touching the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at
[L. S.] Pontotoc, the first Monday of June, A. D. 1848, and 72d year of the independence of the United States.

Issued the 8th day of November, 1848.

G. M. RAGSDALE, *Clerk.*

Endorsement: "Came to hand 9th Novr., 1848."

"Executed the 13th day of Novr., 1848, on the plaintiffs' attorneys."

A. A. KINCANNON,
Marshal, no. dist., Missi.
By E. W. ROOTES, *D. M.*

Executing, entering, and returning, $2 50; mileage, $3 00: $5 50.

Subpœna.

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the President, Directors, and Company of the Union Bank of Tennessee, greeting:

For certain causes offered before us, in our district court for the northern district of Mississippi, sitting in chancery, we command you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at our district court, in and for said district, sitting in chancery, to be held at the town of Pontotoc on the first Monday of December, to answer to a bill of complaint exhibited against you by John D. Bradford and Benjamin M. Bradford, complainants, in our said court; and further to do and receive what our said court shall consider in this behalf. Herein fail not, as you will answer the contrary at your peril.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of June, A. D. 1848, and in the 72d year of the independence of the United States.

[SEAL.]

Issued the 8th day of November, 1848.

G. M. RAGSDALE, *Clerk.*

Endorsements.—"The def't is required to enter its appearance in this case, in the clerk's office, on or before the day at which this writ is returnable, otherwise the bill may be taken pro confesso.

G. M. RAGSDALE, *Clerk.*

Came to hand 9th November, 1848, and executed the 13th November, 1848, on the defendant's attorneys.

A. A. KINCANNON, *M., No. dist., Missi.*
By E. W. ROOTS, *D. M.*

Supersedeas.

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

Whereas, in the district court of the United States, for the northern

district of Mississippi, at the June term thereof, A. D. 1848, a judgment was obtained against John D. Bradford and Benjamin M. Bradford, at the suit of the Union Bank of Tennessee, for the sum of $3,740 debt, $372 $\frac{1}{100}$ damages and costs of suit; and, therefore, you were lately commanded, that of the goods and chattels, lands and tenements, of the said John D. Bradford and Benjamin M. Bradford, you should cause to be made the damages, interest, and costs, by the judgment aforesaid obtained. Nevertheless, because that writ improvidently and erroneously issued out of the said court, therefore you are hereby commanded, that from further proceedings to execute the said writ, upon the judgment aforesaid, you desist and entirely supersede, at your peril.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at [L. S.] Pontotoc, the first Monday of June, A. D. 1848, and in the 72d year of the independence of the United States.

Issued the 8th day of November, 1848.

G. M. RAGSDALE, *Clerk.*

Endorsement.—Came to hand 9th November, 1848. Obeyed this 9th November, 1848.

A. A. KINCANNON, *Marshal, no. dist., Missi.*
By E. W. ROOTES, *D. M.*

Notice of application for injunction.

I hereby waive the right of notice, to which as attorney of record for the President, Directors, and Company of the Union Bank of the State of Tennessee, I am entitled, of an application to the hono. Saml. J. Gholson for an injunction to restrain the collection of a judgment rendered in the U. S. district court at Pontotoc, at the June term, 1848, in favor of said bank against John D. Bradford and Benjamin M. Bradford for $4,113 $\frac{1}{100}$, and consent that such application may be made, when and where said defendants may think fit, without further notice to me.

WM. F. STEARNS, *Att'y for Un. Bk. of Tenn.*

Holly Springs, Oct. 16th, 1848.

Demurrer by defendant to complainants' bill.

UNITED STATES OF AMERICA:

The demurrer of the President, Directors, and Company of the Union Bank of the State of Tennessee, John M. Bass and J. Corry, defendants, to a bill of complaint and injunction, exhibited against them by John D. Bradford and Benjamin M. Bradford, on the chancery side of the district court of the United States, for the northern district of Mississippi, at Pontotoc.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill, and for cause of demur-

rer showeth, 1st. That the said complainants have not, by their said bill, made such a case as entitles them in a court of equity to any discovery or relief from or against these defendants, touching the matters contained in the said bill, or any of said matters.

2d. That the complainants, by their own showing, had an adequate and unembarrassed remedy at law, touching the ground of their complaint in this bill, and do not show any excuse for having failed to make their remedy at law available.

3d. That the complainants have not made a legal and sufficient tender of the money due upon the judgment enjoined in this cause, so as to put the defendants, the President, Directors, and Company of the Union Bank of the State of Tennessee in default in this cause.

Whereupon, and for divers other good causes of demurrer appearing in the said bill of complaint, these defendants do demur to the said bill, and to all the matters and things therein contained, and pray the judgment of this honorable court, whether they shall be compelled to make any further or other answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

WM. F. STEARNS,
Sol'r for defendant.

I certify that, in my opinion, the foregoing demurrer is well founded in point of law.

WM. F. STEARNS,
Sol'r for defendant.

December 5, 1848.

The complainants waive the necessity of an affidavit by the defendant, that said demurrer is not taken for delay, as required by the rule of this court.

GOODWIN & SALE,
For complainants.

Order of court at December term, A. D. 1848.

JNO. D. & BENJ. M. BRADFORD
vs.
The PRESIDENT, DIRECTORS, and Company of the Union Bank of Tennessee.

Saturday, December 9, 1848. In chancery.

By the consent of counsel, this day came on to be argued defendant's demurrer to complainant's bill; and after argument, the court not being advised as to the judgment to be pronounced, the same is taken under advisement, to be determined in vacation as of this term.

There is no entry upon the minutes of court, and nothing on file with the papers, showing the judgment of the court upon the demurrer of the defendants.

Answer to bill.

The joint and several answer of the President, Directors, and Company of the Union Bank of the State of Tennessee, and of John M. Bass, the president, and James Corry, the cashier, of said bank, to a bill of complaint and injunction exhibited against them by John D. Bradford and Benjamin M. Bradford, in chancery, in the district court of the United States, for the northern district of Mississippi, at Pontotoc.

These respondents, now and at all times hereafter, saving and reserving to themselves the benefit and advantage of all exceptions to the said bill of complaint and injunction, for its manifold errors, informalities, and uncertainties, for answer thereunto, or to so much and such part thereof as they are advised it is material for them to answer unto, say:

That it is true that the President, Directors, and Company of the Union Bank of the State of Tennessee, one of the defendants in this suit, did, on or about the 9th day of January, 1845, execute to the complainant, John D. Bradford, the obligation or title bond, a copy whereof is filed with the complainant's bill as "exhibit A;" and that the said John D. Bradford thereupon executed to the said President, Directors, and Company his three several writings obligatory, with the complainant, Benjamin M. Bradford, as security thereto, for the aggregate sum of three thousand seven hundred and forty-one dollars, payable at the dates specified in the complainant's bill. Respondents admit that the said writings obligatory for $3,741 are the same securities that are referred to as "notes," in the condition of the said title bond, and that the said title bond and writings obligatory are part and parcel of one and the same transaction. That transaction, however, these respondents do not regard as a purchase of the two sections of land mentioned in the condition of the said title bond by the said John D. Bradford, but as a substitution of the said John D. Bradford to the rights of one John L. Brown, who had previously purchased said two sections of land from said President, Directors, and Company.

Respondents will now proceed to give a detailed account of the whole of said transactions, and will leave it to the judgment of this honorable court to decide whether it was a purchase or not.

On or about the 12th day of October, 1841, the President, Directors, and Company of the Union Bank of the State of Tennessee, by their agent, A. H. Wynne, sold to one John L. Brown the said two sections of land mentioned in the complainants' bill for the sum of $3,248 $\frac{00}{100}$; and the said Brown having executed his *his* several notes for the purchase money, with the said John D. Bradford as his endorser or surety, the said President, Directors, and Company thereupon executed to the said Brown their title bond, conditioned to make him a good and valid title to said lands, upon the payment by him of the purchase money.

Two or more of the said notes having been dishonored at maturity, and the said Brown being regarded as insolvent, the said President,

Directors, and Company caused suit to be instituted against said John D. Bradford as the endorser of said notes, and judgment was obtained against him, and an execution, issued upon said judgment, was about to be levied upon his property.

Under these circumstances, respondents believe and charge, that the said John D. Bradford conceived the design of avoiding his liability, growing out of his endorsement of Brown's notes, by the commission of a fraud upon the said President, Directors, and Company; and that, in pursuance of such design, about the 24th day of September, 1844, he caused a letter to be written and addressed by the complainant, Benjamin M. Bradford, (who is a brother of the said John D. Bradford, and with whom the said John D. resided at the time,) to one George W. Foster, (then and now residing near Nashville, Tennessee,) requesting the said Foster to see the President of the Union Bank, and endeavor to effect an arrangement by which the said title bond, executed as aforesaid to the said Brown, might be taken up, and a new title bond executed to the said John D. Bradford for the same lands, upon the ground that the said John D. Bradford was only the accommodation endorser of Brown; that Brown was insolvent; and that it was a hard case upon John D. Bradford, inasmuch as there were old judgments against Brown which, as matters then stood, would bind said lands in favor of Brown's creditors, as soon as payment should be coerced from John D. Bradford. It was stated, in said letter, that by such an arrangement no detriment could happen to the bank. The original of said letter, the purport and substance of which is stated above, will be produced at the hearing of this cause. The arrangement desired by the said John D. Bradford was earnestly advocated in the said letter by the said Benjamin M. Bradford, as a matter of favor and indulgence to the said John D. Bradford. The said letter was received by the said George W. Foster, who laid the same before the officers of said bank; and they, after some conversation in regard thereto, assented to the proposed arrangement purely on the ground of favor and indulgence, as they were not disposed to coerce the payment of money from a surety, and at the same time withhold from him the means of indemnifying himself against loss. The said Brown having been informed of the action of the board of directors of the Union Bank upon the proposition of the complainants, the respondents suppose he communicated the same to the said John D. Bradford, as they have found that, on the 2d day of December, 1844, the said John D. Bradford himself addressed a letter to the said George W. Foster, stating that he had been informed that the Union Bank had acceded to the said proposition, and he therefore inclosed the blank notes of himself and his brother, Benjamin M. Bradford, which he requested the said Foster to fill up with the proposed amounts, and present to the bank, taking from the bank a title bond to him (the said John D.) for the lands described in Brown's title bond. Thereupon the said John L. Brown delivered up the title bond executed to him as aforesaid; the said Foster handed over to said bank the blank notes of the said John

D. and Benjamin M. Bradford, which were filled up as had been agreed on; a new title bond was executed by the said President, Directors, and Company to the said John D. Bradford for the said lands, and then the new arrangement was completed. The foregoing is the true history of the so-called purchase of said lands by the said John D. Bradford, and is the identical transaction spoken of by the complainants in their bill as a purchase, and no other; but it seems that the complainants, in framing their bill, have carefully kept out of view all the material circumstances of the case.

Respondents admit that the said President, Directors, and Company caused a suit to be instituted in the district court of the United States, for the northern district of Mississippi, at Pontotoc, against the said John D. and Benjamin M. Bradford, upon the writings obligatory executed by them as aforesaid for $3,741; and that a judgment was rendered against them at the time and for the amount specified in the bill.

These respondents have already stated what is their belief in regard to the motives by which the said John D. Bradford was actuated in making his so-called purchase of said lands; but they know not what may have been his opinion in regard to the state of the title to said lands. Whatever that opinion may have been, however, it was not predicated upon any statement or representation made to him by any of these respondents, for no statement or representation whatever was made by either of them in regard to the title to said lands.

Respondents do not know, and had no information upon which to form a belief, whether or not, at the time of the execution of the said title bond to the said John D. Bradford, there were any improvements or cleared land upon either of the said two sections of land, or touching the yearly value of said lands.

Respondents have been informed and believe, that prior to the 9th day of January, 1845, both of said sections of land, with the exception of one quarter of a section, were sold for taxes, and purchased as stated by the complainants in their bill; but, inasmuch as respondents do not know whether or not the said sale was legally made, they cannot admit that the said sale was an encumbrance upon the legal title of the Union Bank of Tennessee to said lands; nor can they admit, for the same reason, that the title to the east half and southwest quarter of section No. twelve, has become perfect under said tax sale; and if it be true, as alleged, that such title is perfect, respondents require the strictest proof thereof.

These respondents did not, nor did either of them, know at the time of the substitution of the said John D. Bradford to the said John L. Brown as aforesaid, that said lands had been sold for taxes, and of course they did not communicate to the said John D. Bradford any information upon the subject of such sale.

Rospondents admit that they did not pay the taxes due upon the said lands for the year 1842, and they are advised and insist, that it was not their duty to have paid the same, inasmuch as the said John L. Brown, by virtue of his said purchase of said lands, on the 12th of

October, 1841, was, in equity, the owner of said lands, and it was his duty to have paid the taxes thereon for the year 1842; and they are further advised, and insist, that neither the said John L. Brown, nor the said John D. Bradford, who was the security of the said Brown for the payment of the purchase money of said lands, had any legal rights to require that the said taxes should be paid by the said Union Bank, nor any reason to complain of its failure to pay said taxes. Respondents, it is true, did not make any communication to the said John D. Bradford in regard to the payment or non-payment of the taxes due on said land for the year 1842, and they insist that it was not their duty to have done so. The truth is, such an idea never occurred to respondents, nor did they conceal or attempt to conceal any thing from said Bradford in regard to said lands or the title thereto.

Respondents further answering state, that on the 25th day of February, 1846, they redeemed from the State of Mississippi the said section No. 2, township 5, range 6 east, for which they paid the sum of seventy-seven $\frac{81}{100}$ dollars, as will appear by reference to the relinquishment of the auditor of public accounts, which is herewith filed, marked exhibit 1, and prayed to be taken as part of this answer.

Respondents are advised and insist, that the said John D. Bradford is bound to refund to them the amount of money paid by them for the redemption of said lands. The east half and southwest quarter of said section No. 12, township No. 7, of range 5 east, have not been redeemed by respondents, though they would have been redeemed but for the interference of the complainants, who have induced the purchaser of the east half of section 12, at least, to refuse to permit your respondents to redeem it.

Respondents do not know, and have no information in regard to the value of the said portion of section 12, which has not been redeemed, and they are advised and insist that the complainants have no right to go into an inquiry in regard to the value of said land that has not been redeemed, inasmuch as they have no right, under the circumstances of the case, to require that respondents should redeem it.

Respondents do not know of any encumbrance existing upon said lands at the time of the said transaction with the said John D. Bradford, unless the said tax sales were encumbrances, nor do they know whether or not the said lands, at that time or now, were or are in the possession of others holding adversely to the title of the said Union Bank; nor have they any information upon which to form a belief touching such alleged adverse possession; nor did they have any such knowledge or information at the time of the said transaction with the said John D. Bradford. These respondents admit that they cannot make to the said John D. Bradford an unencumbered title to the east half and southwest quarter of the said section 12, if the title thereto of the purchaser under the said tax sales is perfect; but if the same is not perfect, they can make a good and valid title to the whole of said two sections.

These respondents have been informed and believe that the said John D. Bradford, on the 22d day of September, 1848, made a tender

to W. F. Stearns, esq., the attorney at law of the said Union Bank, by whom the said judgment was obtained against the complainants, as set forth and specified in the paper filed with the complainants' bill as "exhibit C," but no such tender was ever made to these respondents, or any of them; nor did these respondents, or either of them, ever authorize the said Stearns to comply with the condition upon which the said tender was made to him; and these respondents therefore insist that the complainants, by making the said tender to the said Stearns, instead of making the same to the said President, Directors, and Company, have failed to put the said President, Directors, and Company in default.

These respondents do not believe the allegation to be true, that the said transaction was an entire contract, and that the said John D. Bradford would not have made said arrangement for one only of said two sections of land without the other, or for one and any portion of the other without the whole. The complainants, throughout their bill, have treated the transaction as an original and independent purchase of said lands. They have attempted, by implication and inuendo, to make it appear that the proposition for a sale of said lands first came from these respondents, and was urged by them upon the said John D. Bradford, and that he was induced by their fraudulent misrepresentations and concealments of facts, to make the purchase. But these respondents most positively deny that the character of the transaction in question was such as is represented by the complainants; and they also deny that they had any other or further agency in effecting the arrangement which resulted in the substitution of the said John D. Bradford to the said John L. Brown, as foresaid, than to accede to the proposition communicated to them, as aforesaid, on his behalf. They did this reluctantly, and with hesitation, as they were thus extending time for the payment of obligations then due, a part of which were then in judgment. They offered no inducement to the said John D. Bradford to enter into the said arrangement, and the only inducement offered on either side were offered to these respondents on the part of the said John D. Bradford.

Respondents could not be benefitted in any manner by such an arrangement. On the contrary, they could only be injured by it, and the said John D. Bradford was the only party who was expected to derive any advantage from it, and it was solely for his advantage that respondents, in a spirit of kindness toward him, assented to his wishes. If, as alleged by him, his intentions were bona fide, fair, and honorable towards said Union Bank, which these respondents are constrained to believe was not the case, his sole object was to obtain indemnity against his liability for said John L. Brown. He desired to have all Brown's right to the land transferred to himself. If, from any cause, it had been out of the power of these respondents to substitute the said Bradford to the said Brown in regard to the whole of said lands, they have no doubt but that the said Bradford, acting upon the obvious suggestions of his interest, would have been glad to effect a substitution in

regard to any portion, however small, of either of said sections of land, if he could be allowed to do so.

These respondents are advised and insist that a court of equity, in a case free from fraud, will not rescind a contract unless the parties can be placed in statu quo. They also insist that in this case their conduct has been fair and bona fide; and they are advised that, under the present bill, they cannot be placed in the situation which they would be entitled to occupy in the event of a rescission of the contract in question. They are also advised, and insist, that it was the duty of the said John L. Brown to have paid all the taxes legally assessed upon said lands after the date of his said purchase, and that he could not have set up any defence, growing out of his failure to pay such taxes, against his liability to pay the notes executed by him for the purchase money; and that the said John D. Bradford being the security of the said Brown for the payment of said notes, could have had no better right than the said Brown himself to question his liability upon said original contract. Respondents further insist that the judgment enjoined in this suit is but a continuation of the original liability of the said John D. Bradford, arising under the said contract with John L. Brown, the character of that liability only having been changed from that of surety to that of principal.

These respondents are constrained to believe, from the conduct of the said John D. Bradford towards them, since he succeeded in procuring himself to be substituted to said Brown as aforesaid, that he was aware when he set about to effect that arrangement that the tax sales, mentioned in the bill, had taken place; and that his object was, in making the arrangement, to escape altogether from his liability on account of his said endorsement for Brown, in proof whereof these respondents state, that the said John D. Bradford, almost immediately after the expiration of the time limited by law for the redemption of the said lands, filed his bill in the district chancery court of the State of Mississippi, at Holly Springs, against the respondents, for a rescission of the said contract, upon grounds similar to those stated in the present bill, though the said bill upon the coming in of the answer and the publication of the testimony taken by the respondents, was dismissed by the said John D. Bradford. And they further state, that they learned, when they applied to Mr. Gholson, the purchaser at said tax sale of the east half of section 12, to redeem the same, that the complainant, B. M. Bradford, had obtained a pledge from the said Gholson, that he would not permit respondents to redeem said land until the present controversy should be terminated; whereas respondents would have been permitted to redeem said land but for the interference of the said B. M. Bradford, who was incited thereto, as respondents believe and charge, by the said John D. Bradford.

Respondents are also advised and insist, that the defence of the complainants, if any they have in the premises, is one of legal cognizance, and that, as no defence was made at law, this court will not now interpose in favor of the complainants.

And now, having sufficiently answered the said bill of complainants, respondents pray to be hence dismissed, with their costs in this behalf most wrongfully sustained.

WILLIAM F. STEARNS,
Solicitor for defendants.

In authentication of the foregoing as the answer of the President, Directors, and Company of the Union Bank of the State of Tennessee, the said President, Directors, and Company have caused their common and corporate seal to be hereunto affixed, [L. S.] at their banking-house, in the city of Nashville, in the State of Tennessee, this tenth day of February, 1849; and have also caused the same to be attested by the signatures of John M. Bass, their president, and James Correy, their cashier.

JOHN M. BASS, *President.*

J. CORREY, *Cashier.*

UNITED STATES OF AMERICA,
State of Tennessee.

Before me, Morgan W. Brown, judge of the district court of the United States, for the eastern, middle, and western district of the State of Tennessee, personally appeared John M. Bass and James Correy, who being duly sworn made oath, that the foregoing purporting to be, is the common and corporate seal of the President, Directors, and Company of the Union Bank of the State of Tennessee, and was by them, as the president and cashier of said bank, and under the authority of the board of directors of said bank, affixed as above in authentication of the foregoing answer; and they further made oath, that the matters and things stated in said answer, as of their own knowledge, are true; and those stated upon the information of others they believe to be true.

JOHN M. BASS,
JAMES CORREY.

Sworn to and subscribed before me, this tenth day of Feb'ry, 1849.

MORGAN W. BROWN.

Endorsed upon answer: Filed 5th June, 1849.

G. M. RAGSDALE, *Clerk.*

Exhibit 1, *in complainants' answer.*

Whereas the tax collectors in Tishemingo county did, on the 21st day of August, A. D. 1843, sell the whole of section two, township 5, R. 6 east, in said county, as the property of John L. Brown, for the State and county tax due thereon for the year 1842, and for the want of bidders, struck off the same and deeded it to the State; and the time of redemption having expired, and the legislature having passed an act, entitled "An act to amend the revenue laws of this State," approved the day of February, 1846, extending the time of redemption for two years from the date thereof:

Therefore, I, James E. Matthews, auditor of public accounts of the State of Mississippi, for and in consideration of the sum of seventy-seven $\frac{11}{100}$ dollars, to me in hand paid by John D. Desmukes, agent for the Union Bank of Tennessee, in full redemption of the said lands, including all interest and taxes due on the same to this date, have this day released all title, claim, or interest that the State of Mississippi has acquired to said land by the sale made as aforesaid.

In testimony whereof I have hereunto set my hand, and affixed the seal of my office, this 25th day of February, A. D. 1846.

[SEAL.]

JAMES E. MATTHEWS,
Auditor of public accounts.

Complainants' replication to respondents' answer.

J. D. & B. M. Bradford
vs.
The President, Directors, & Co., of the Union Bank of the State of Tennessee, and others.

District court of the United States, for the northern district of Mississippi, June term, 1849.

And the said complainants, for replication to the answer of the defendants, say, that the same is uncertain, untrue, and insufficient; and that their bill is certain, true, and sufficient, and which they are ready to maintain and prove, as the court may direct.

WORD, GOODWIN & SALE,
For complainants.

An agreement of counsel.

John D. & Benjamin M. Bradford
vs.
The President, Directors, & Company of the Union Bank of the State of Tennessee, John M. Bass, and James Corry.

In the district court of the United States, for the northern district of Mississippi, at Pontotoc, on the chancery side.

In the above stated cause it is agreed, between the solicitors for the complainants and defendants, that each party may have leave to take depositions out of this State, before any judge or justice of the peace, upon written interrogatories and cross interrogatories; the party wishing to take any such deposition to serve the solicitor of the other party with a copy of his interrogatories, at least twenty days before the other party shall be required to file his cross interrogatories.

WM. F. STEARNS, *Sol'r for def'ts.*
GOODWIN & SALE & WORD,
For complainants.

Pontotoc, June 5, 1849.

Order of court, June term, 1849.

WEDNESDAY, *June the 6th,* 1849.

JOHN D. BRADFORD & BENJAMIN M. BRADFORD
vs.
The PRESIDENT, Directors, and Company of the *Planter's* Bank of Tennessee, and others. } In chancery.

In this case it is ordered by the court, that the defendants have leave to take the depositions of the defendants, John M. Bass and James Corry, saving all legal exceptions.

Order to set said cause for final hearing.

JOHN D. BRADFORD & BENJAMIN M. BRADFORD
vs.
The PRESIDENT, Directors, and Company of the Union Bank of the State of Tennessee, John M. Bass, and James Corry.

On the chancery side of the district court of the United States, for the northern district of Mississippi, at Pontotoc.

The clerk will set down this cause for hearing upon bill, answer, and proofs.

WM. F. STEARNS,
Sol'r for defendants.

Dec. 3, 1849.

Order of court, December term, 1849.

WEDNESDAY MORNING, *Dec. 12th,* 1849.

THE UNITED STATES OF AMERICA,
Northern district of Mississippi.

District court at Pontotoc, December term, 1849.

JOHN D. BRADFORD & BENJAMIN M. BRADFORD
vs.
The PRESIDENT, Directors, and Company of the Union Bank of the State of Tennessee, John M. Bass, and James Corry. } In equity.

Be it remembered, that, on this 12th day of December, 1849, before the honorable Samuel J. Gholson, judge of said court, this cause came on final hearing upon the bill, answer, exhibits, and proof in the cause, and was argued by counsel; whereupon the court thought fit to order, adjudge, and decree, and accordingly doth order, adjudge, and decree, that the injunction heretofore granted in this cause be dissolved, and the bill of the complainants be dismissed, but without prejudice, and that the complainants pay all the costs of this suit, to be taxed by the clerk, for which execution may issue as at law.

S. J. GHOLSON.

12th Dec., 1849.

From which decree the said complainants prayed and obtained an appeal to the next term of the Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next.

It is further ordered by the court, by consent of parties, that the complainants have ninety days, from this date, to file an appeal bond in this cause.

Appeal bond.

Know all men by these presents, that we, John D. Bradford, Benjamin M. Bradford, William D. Bradford, and William H. Duke, are held and firmly bond, unto the President, Directors, and Company of the Union Bank of the State of Tennessee, in the sum of eight thousand two hundred and twenty-six dollars and thirty-eight cents, to be paid to the said President, Directors, and Company of the Union Bank of the State of Tennessee. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each [of our] heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this eleventh day of March, A. D. 1850.

Whereas the said John D. Bradford and Benjamin M. Bradford hath prayed and obtained an appeal to the Supreme Court of the United States, to reverse the judgment and decree rendered in the case of the said John D. and Benjamin M. Bradford, complainants, against the said President, Directors, and Company of the Union Bank of the State of Tennessee, in the district court of the United States, for the northern district of Mississippi.

Now, therefore, the condition of this obligation is such, that if the said John D. Bradford and Benjamin M. Bradford shall prosecute their said appeal to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. D. RRADFORD, [SEAL.]
B. M. BRADFORD, [SEAL.]
W. D. BRADFORD, [SEAL.]
W. H. DUKE. [SEAL.]

Sealed and delivered in presence of—
W. D. HOLDEN.

Endorsed on bond: I approve of the foregoing bond and securities. Given under my hand this 12th of March, A. D. 1850.

S. J. GHOLSON,
Judge, U. S. D. C., for Mississippi.

Filed March 12th, 1850.

G. M. RAGSDALE, *Clerk.*

Interrogatories by complainants to Singleton Hughes, Benjamin Hancock, and Josiah D. Roberts.

THE UNITED STATES OF AMERICA,
Northern district of Mississippi,
District Court.
December term, 1849.

JOHN D. and B. M. BRADFORD, complainants,
vs.
THE PRESIDENT, DIRECTORS, and COMPANY of the UNION BANK OF TENNESSEE. } In chancery.

Interrogatories to be propounded to Singleton Hughes, Benjamin Hancock, and Josiah D. Roberts, witnesses on the part of the complainants.

1st interrogatory, to be propounded to Singleton Hughes:

Do you or not know who has been in possession, if any person, of sec. 12, T. 7, R. 5 E., or any part thereof, in Pontotoc county, Mississippi, since the beginning of 1845? If so, please state who has been in possession, and of what part or portion of said section.

2d. Do you or not know how much, if any, cleared land is there on said section, and on what portion of said section, and how long has said portion been cleared and in cultivation?

3d. What are the annual rents and profits of said section of land, or the cleared land thereon worth?

Interrogatories to be propounded to Benjamin Hancock.

1st. Do you or not know who has been in possession of section 2, T. 5, R. 6 E., Tishemingo county, Mississippi, or any part of said section, since the beginning of the year 1845? If so, please state who has been so in possession, and what part or portion of said section, and for how long a time.

2d. Is there or not cleared land on said section of land? If so, please state how much cleared land, and on what part or portion of said section is said cleared land, if any; and how long has the same been cleared.

3d. What is the annual value of the cleared land on said section.

Interrogatories to be propounded to Josiah D. Roberts.

1st interrogatory. Are you or not acquainted with section 2, T. 5, R. 6 E., in Tishemingo county, and section 12, T. 7, R. 5 E., in Pontotoc county, both in the State of Mississippi? If so, please state the aggregate value of the said two sections of land, the value of each section separately, and the value of each quarter section of each of said sections separately, and which of said sections is most valuable.

GOODWIN, SALE, BRADFORD & WORD,
Solicitors for complainants.

It is agreed that the depositions of the above named witnesses may be taken before any justice of the peace in Pontotoc or Tishemingo county, and the interrogatories hereto attached to be propounded, and none others, and that the same may be taken and certified by such justice of the peace, without any commission. Oct. 18th, 1849.

GOODWIN, SALE, BRADFORD & WORD,
Sol's for complainants.
WM. F. STEARNS,
Solicitor for defendants.

Endorsed: Filed Nov. 7th, 1849.

G. M. RAGSDALE, *Clerk.*

Deposition of Singleton Hughes.

THE STATE OF MISSISSIPPI,
Tishemingo county.

I, John Thompson, an acting justice of the peace in and for said county, caused Singleton Hughes, a witness for the complainants in a certain suit now pending in the district court of the United States, for the northern district of Mississippi, in chancery, wherein John D. & B. M. Bradford are complainants, and the President, Directors, and Company of the Union Bank of Tennessee are defendants, to come before me on the third day of November, 1849, and being first duly sworn him the truth and whole truth to depose, he on his oath testified as follows:

Answer to interrogatory 1st.

I have been in possession of the north half of said section since the latter part of the year 1841.

Answer to interrogatory 2d.

I cleared in the year 1842, on said half section, about 25 acres; in the year 1843, about 25 acres; in the year 1845, about 6 acres; in the year 1846, about 20 acres; and in the year 1848 about fifteen or twenty acres, in all about 90 or 100 acres.

Answer to interrogatory 3d.

I think the rent of the cleared land on said section is worth annually about one dollar and fifty cents per acre.

SINGLETON HUGHES.

THE STATE OF MISSISSIPPI,
Tishemingo county.

The above examination having been carefully read to and understood by the deponent, and subscribed by him, it is certified under my hand and seal on the day and at the place named in the caption.

JOHN THOMPSON, [SEAL.]
Justice of the peace.

Interrogatories to be propounded to Benjamin Hancock.

1st. Do you or not know who has been in possession, if any person, of section 2, T. 5, R. 6 E., Tishemingo county, Mississippi, or any part

of said section, since the beginning of 1845? If so, please state who has been so in possession, and of what part or portion of said section.

2d interrogatory. Is there or not cleared land on said section of land? If so, please state how much cleared land, and on what part or portion of said section is said cleared land, if any, and how long has the same been cleared.

3d interrogatory. What is the annual value of the cleared land on said section?

THE STATE OF MISSISSIPPI,
Tishemingo county.

I, John Thompson, an *an* acting justice of the peace in and for said county, caused Benjamin Hancock, a witness for the complainants in a certain suit now pending in the district court of the United States, for the northern district of Mississippi, in chancery, wherein John D. and Benjamin M. Bradford, are complainants, and the President, Directors, and Company of the Union Bank of Tennessee are defendants, to come before me on the 23d day of November, 1849; and having first duly sworn him, the truth and whole truth to depose, he on his oath testified as follows:

Answer to interrogatory 1st. I have occupied the southeast quarter since that time.

Answer to interrogatory 2d. There is about forty-five acres cleared land on the east half; about thirty acres was cleared in the time of the Indian occupancy; fifteen acres I have cleared since 1845.

Answer to interrogatory 3d. The old part is worth $1 00 per acre, and the new part $2 00 [per acre] annually.

BENJ. HANCOCK.

THE STATE OF MISSISSIPPI,
Tishemingo county.

The above examination having been carefully read to and understood by the deponent, and subscribed by him, it is certified under my hand and seal, on the day and at the place named in the caption.

JOHN THOMPSON, [SEAL]
Justice of the Peace.

Deposition of Josiah Roberts.

Interrogatories to be propounded to Josiah D. Roberts.

1st interrogatory. Are you or not acquainted with section 2, T. 5, R. 6 E., in Tishemingo county, and section 12, T. 7, R. 5 E., in Pontotoc county, both in the State of Mississippi? If so, please state the aggregate value of said two sections of land, the value of each section separately, and the value of each quarter section of each of said sections separately, and which of said sections is most valuable.

Answer to the first interrogatory. I am acquainted with sections 12, T. 7, R. 5, and 2, 5, 6, the former in Pontotoc, and the latter in Tishemingo, both in the State of Mississippi. The aggregate value of these

two sections is four thousand five hundred and sixty dollars. Section twelve, township seven, of range five, Pontotoc county, is worth $2,560. Section two, township five, of range six, is worth $2,000.

Section 12, T. 7, R. 5, value of quarter.	N. E. ¼	$640.
	S. E. ¼	480.
	N. W. ¼	800.
	S. W. ¼	640.
Section 2, T. 7, R. 5, value of quarter.	N. E. ¼	720.
	S. E. ¼	400.
	N. W. ¼	240.
	S. W. ¼	640

JOSIAH ROBERTS.

STATE OF MISSISSIPPI, *Tishemingo county.*

The above examination having been carefully made to and answered by the deponent, and subscribed by him, it is certified under my hand and seal on the day and at the place named in the caption.

JOHN THOMPSON, [SEAL.]
Justice of the peace.

Testimony of defendants.

To Messrs. John D. Bradford and Benjamin M. Bradford, or Messrs. Bradford and Wood, their solicitors of record.

Take notice, that in ten days after the service upon you of this notice, I shall apply to the clerk of the district court of the United States, for the northern district of Mississippi, at Pontotoc, for a commission to take the depositions of John M. Bass, James Corry, and A. H. Wynne, citizens of the State of Tennessee, G. W. Foster, a citizen of the State of Alabama, and William Y. Gholson, a citizen of the State of Ohio, to be read as evidence upon the hearing of a cause now pending in said court, on the chancery side thereof, wherein you are complainants, and the President, Directors, and Company of the Union Bank of the State of Tennessee, and others, are defendants; and that upon their examination the following interrogatories will be propounded to said witnesses, viz:

To A. H. Wynne.

1st. Are you or not acquainted with John D. Bradford, one of the complainants in this suit; and if yea, how long have you known him?

2d. Do you know any thing of a sale, made by the President, Directors, and Company of the Union Bank of the State of Tennessee, to John L. Brown, of section 12, township 7, range 5 east, of the basis meridian, of the Chickasaw cession, in the State of Mississippi, and section 2, township 5, range 6 east, of the same meridian? If yea, state who negotiated said sale on the part of said bank; at what

time the said sale took place; how much was agreed to be paid by said Brown for said land; and in what manner he secured the payment of the purchase money. State the terms of the entire transaction fully and particularly.

To G. W. Foster.

1st. Are you or not acquainted with the complainants, John D. Bradford and Benjamin M. Bradford, or either of them; and if yea, how long have you known them?

2d. Are you or not acquainted with the handwriting of the complainants, or either of them; and, if yea, how was that knowledge acquired; did you ever see them write, or have you corresponded with them?

3d. Did you ever receive a letter, or letters, from the complainants, or either of them, in relation to a claim of the President, Directors, and Company of the Union Bank of the State of Tennessee against the complainant, John D. Bradford, as endorser or security of one John L. Brown? If yea, produce such letter or letters, and make the same a part of your deposition.

4th. If you received such a letter or letters as are inquired of in the preceding interrogatory, state whether or not the same, or either of them, was or were submitted by you to said Union Bank, and what was done by said bank in relation to the matter treated of in said letter or letters. Be full and explicit in relation to the entire transactions.

To John M. Bass and James Corry.

1st. Are you or not officers of the Union Bank of Tennessee; and if yea, what offices do you respectively hold, and how long have you held them?

2d. State, if you know, whether a sale, made on the 12th of October, 1841, by A. H. Wynne, as agent of said bank, to John L. Brown of section 12, township 7, range 5 east, and section 2, township 5, range 6 east, lying in the Chickasaw cession, in the State of Mississippi, was made under the authority of said bank, or ratified by it after its officers were informed of said sale.

3d. State, if you know, under what circumstances the complainant, John D. Bradford, obtained from said bank, on the 9th of January, 1845, a title bond for the said lands. Be full, explicit, and circumstantial in giving the details of the transaction.

4th. Was it supposed or intended by you, when the said title bond was executed, that the transaction was to be a new and independent one, or a continuation of the former liability of the said John D. Bradford?

5th. Upon what ground, and for what reason, was it that said bank executed said title bond to said John D. Bradford, and took his notes for the purchase money?

To Wm. Y. Gholson.

1st. Are you or not acquainted with the complainants, and if yea, how long have you known them?

2d. Are you the same individual who, on the 23d of February, 1843, purchased at the tax collector's sale in Pontotoc county, Mississippi, the east half of section 12, township 7, range 5 east, lying in said county?

3d. Were you ever applied to on behalf of the Union Bank of Tennessee to permit said land to be redeemed from you; if yea, when, and by whom, and with what result; and why did you refuse to permit said Bank to redeem said land?

You can file cross interrogatories if you think proper.

WM. F. STEARNS,
Solicitor for the Union Bank of Tennessee.

JOHN D. & B. M. BRADFORD, complainants,
vs.
THE UNION BANK OF THE STATE OF TENNESSEE.

Cross interrogatories to be propounded to A. H. Wynne, G. W. Foster, John M. Bass, James Corry, and William Y. Gholson.

To A. H. Wynne.

1st. Was the contract referred to in the 2d direct interrogatory in writing or otherwise? If in writing, attach it, and make said writing a part of your answer to this cross interrogatory.

To G. W. Foster.

1st. If you ever received any letters, such as mentioned in the 3d direct interrogatory, please mention all the letters received by you on the same subject, and let them all accompany your answer.

2d. State by what authority, if any, you acted in the premises, and if that authority was in writing; please let that authority accompany *to* this cross interrogatory.

To John M. Bass and James Corry.

1st. If there was any writing showing the connexion between the contract of John L. Brown, mentioned in the 2d direct interrogatory to you, and the contract with the complainant, John D. Bradford, mentioned in the 3d direct interrogatory, please attach such writing to your answer to this cross interrogatory, and make it part of the same.

2d. If *the* there was no writing connecting the two contracts with each other, please state why you connect them together, or give them any relation to each other.

To W. Y. Gholson.

1st. Please state whether, at the time you purchased said lands,

mentioned in the 2d direct interrogatory to you, you acted as the agent of the complainant, or either of them, or for yourself, and on your own account.

2d. Please state whether *whether* there was any consideration moving from the complainants to induce you to refuse to let the said bank redeem the said land.

BRADFORD & WORD,
Solicitors for complainants.

Commission and deposition of G. W. Foster.

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to Wm. B. Wood, judge of the county court of Lauderdale county, in the State of Alabama:

Know ye, that, trusting to your fidelity and provident circumspection in diligently examining G. W. Foster, a witness on behalf of the defendants in a certain cause now pending in the district court of the United States, for the district aforesaid, on the chancery side of said court, wherein John B. Bradford and Benjamin M. Bradford are complainants, and the President, Directors, and Company of the Union Bank of the State of Tennessee and others are defendants, you are requested, at such certain days and places as you shall appoint, to call, and cause the said witness, G. W. Foster, to come before you, confining yourself in such examination to the interrogatories and cross interrogatories herewith sent, and him diligently examine on oath, and his examination, into the district court aforesaid, you distinctly and plainly set, together with this writ enclosed, with all convenient speed.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi,
[L. S.] at Pontotoc, the first Monday of June, A. D. 1849, and in the 73d year of the independence of the United States.

Issued the 22d day of August, A. D. 1849.

G. M. RAGSDALE, *Clerk.*

Interrogatories to be propounded to G. W. Foster.

1st. Are you or not acquainted with the complainants, John Bradford and Benjamin M. Bradford, or either of them, and if yea, how long have you known them?

2d. Are you or not acquainted with the handwriting of the complainants, or either of them; and if yea, how was that knowledge acquired; did you ever see them write, or have you corresponded with them?

3d. Did you ever receive a letter or letters from the complainants, or either of them, in relation to a claim of the President, Directors, and Company of the Union Bank of the State of Tennessee against the complainant, John D. Bradford, as endorser or security for one John L. Brown? If yea, produce such letter or letters, and make the same a part of your deposition.

4th. If you received such a letter or letters, as are inquired of in the preceding interrogatory, state whether or not the same, or either of them, was or were submitted by you to said Union Bank, and what was done by said bank in relation to the matter treated of in said letter or letters. Be full and explicit in relation to the entire transaction.

Cross interrogatories.

1st. If you ever received any letters, such as mentioned in the 3d direct interrogatory, please mention all the letters received by you on the same subject, and let them all accompany your answer.

2d. State by what authority, if any, you acted in the premises; and if that authority was in writing, please let that authority accompany the answer to this cross interrogatory.

A true copy from the original interrogatories and cross interrogatories on file in the cause.

Test: WM. F. STEARNS,
Solicitor.

AUGUST 22d, 1849.

Pursuant to the annexed commission to me directed, I have called and caused to come before me, at my office, in the town of Florence, in the county of Lauderdale, and State of Alabama, on *the* this 20th day of September, 1849, George W. Foster, a witness in a certain suit now pending in the district court of the United States, for the northern district of Mississippi, at Pontotoc, in said State, wherein John D. Bradford and Benjamin M. Bradford are complainants, and the President, Directors, and Company of the Union Bank of the State of Tennessee and others, are defendants, in behalf of the defendants, who, being by me first duly sworn on the holy evangelist of Almighty God, to testify the truth, the whole truth, and nothing but the truth, of and concerning his knowledge of the matters stated in the direct and cross interrogatories, deposeth and saith as follows:

In answer to the first direct interrogatory said witness says: Witness is acquainted with John D. Bradford and Benjamin M. Bradford, and known them about 18 years.

Answer to 2d interrogatory. Witness states that he does not possess the faculty of retaining a knowledge of the handwriting of persons; but that he has had correspondence with the complainants.

Answer to 3d interrogatory: Deponent states that he did receive such letters as are mentioned in the third interrogatory from complainants, in regard to the claim of the Union Bank of the State of Tennessee, mentioned in the interrogatory, some of which letters he destroyed, and others he handed to Mr. John M. Bass, the president of the bank, two of which are hereunto annexed, marked B and C, and made a part of this answer; and, at all events, embody the substance

of the correspondence had between deponent and complainants upon the subject.

Answer to 4th interrogatory. Deponent answers that he did submit the letters, spoken of in the third interrogatory, to the Union Bank, and the bank agreed to all the propositions of complainants, as mentioned in said letters.

Cross interrogatories.

Answer to 1st cross interrogatory. Witness states that he has fully answered this interrogatory in his answer to the third direct interrogatory, having delivered over to the bank all the letters, except those he destroyed; and those annexed are all he is able to produce, or has any knowledge of at this time, and they fully embody the substance of all the correspondence between complainants and deponent, as before stated.

Answer to 2d cross interrogatory. Witness states that he acted under the authority of the letters hereunto annexed, marked B and C; he had no other authority.

And having fully answered, deponent hereunto subscribes his name.

GEO. W. FOSTER.

I do certify, that the foregoing deposition was taken by me at the time and place mentioned in the caption; that the same was reduced to writing by me, the words of the witness as near as may be, in his presence, and by him signed in my presence; and that the same was not out of my possession until sealed.

In witness whereof I have hereunto set my hand and seal on this twentieth day of September, A. D. 1849.

WM. B. WOOD,
Commissioner.

Letter marked "B."

PONTOTOC, *Sept.* 24, 1849.

DEAR WASH: It has again become necessary for me [to] trouble you. John L. Brown a year or two since bought two sections of land from the Union Bank of Tennessee, for which he agreed to give about $2,100 00 in annual instalments; and he prevailed on my brother, John D. Bradford, to go his security. This he done alone on the ground that Brown had been unfortunate, and he (Brown) assured him that he could sell it for a profit, my brother being not one cent interested. The bank proceeded immediately, on the notes falling due, to sue my brother alone, not even serving a writ on Brown; Brown holding at the same time a title bond from the bank to make him a good and valid title when the purchase money is fully paid. Now see the attitude of my brother. The bank sues my brother and makes him pay the purchase money for the land, and then the bank confirms a

good title to Brown, and then the old judgments against Brown will bind the land in despite of every effort of my brother. I feel assured, from my knowledge of the managers of the Union Bank, that it is not their intention to persecute an individual for an act of disinterested friendship, although he may have made himself liable to them; but, on the contrary, will be disposed to exercise lenity in the premises. This then is to request the favor of you to see Mr. Bass on the subject, and say to him that my brother is desirous to take upon himself the whole debt, provided the bank will extend it so that it will not oppress him to make the payments; and, with the concurrence of Brown, he wishes the title bond from the bank to Brown executed to him. Mr. Bass will perceive at a glance that no detriment can happen to the bank, and at the same time it will secure the land to my brother, to whom (having paid for it) it wrightfully belongs. The bank can still hold the title to the land until the purchase money is paid, and it is a hard case, and the bank will be receiving interest. I presume they cannot have any great objection to extend the debt, say one, two, and three years. This will give my brother a chance to make a portion of the money out of the lands. In such an extension, I will join in the notes with my brother, and consent that they shall be met punctually. Now, my dear sir, the first time you go to town see Mr. Bass, and let me know all about the matter. Brown can never pay, and my brother has the debt to shoulder. Our love to Sarah. Your friend,

B. M. BRADFORD.

N. B. To simplify this letter, my brother wishes the bank to extend the payments of the Brown debt one, two, and three years. He wishes the bank (with the consent of Brown) to change the title bond from Brown to him, to prevent the judgments now standing against Brown from binding the lands.

B. M. B.

Letter marked "C."

PONTOTOC, 2*d Dec'r*, 1844.

G. W. FOSTER, esq.

DEAR SIR: My friend, J. L. Brown, informs me that the Union Bank has acceded to our proposition, made through you to assume his debt, to which I am security; I therefore enclose you our blanks, which you will please fill up with the proposed amounts, and present [them] to the bank. I inferred from the tenor of Brown's letter that his information was from you, and therefore thought it unnecessary to wait for any further answer from you. Please take a bond from the bank to me for title to the land described in Brown's title bond, and enclose it to me, together with the amount of our notes.

Bru. left for Mobile on the 20th ult., by way of Memphis and N. Orleans.

Present my respects to Mrs. F., and tell her if she has any very clever marrying lady in her country, who could fancy a hard faced bachelor

of my years, that I will clothe her with full power to dispose of me as she may think proper. Accept my thanks for your kind services, and believe me, truly yours,

J. D. BRADFORD.

Deposition of Wm. Y. Gholson.

Interrogatories to be propounded to William Y. Gholson:

1st. Are you or not acquainted with the complainants; and if yea, how long have you known them?

2d. Are you the same individual who, on the 23d of February, 1843, purchased at the tax collector's sale in Pontotoc county, Mississippi, the east half of section 12, township 7, range 5 east, lying in said county?

3d. Were you ever applied to on behalf of the Union Bank of Tennessee to permit said land to be redeemed from you; if yea, when, and by whom, and with what result; and why did you refuse to permit said bank to redeem said land?

Cross interrogatories.

1st. Please state whether, at the time you purchased said land mentioned in the 2d direct interrogatory to you, you acted as the agent of the complainants, or either of them, or for yourself, and on your own account.

2d. Please state whether there was any consideration moving from the complainants to you, to induce you to refuse to let the said bank redeem the said land.

A true copy of the original interrogatories and cross interrogatories on file in this cause.

Test: WM. F. STEARNS,
Solicitor.

Aug. 22d, 1849.

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to any judge or justice of the peace of the State of Ohio, greeting:

Know ye, that trusting to your fidelity and provident circumspection in diligently examining William Y. Gholson, a witness on behalf of the defendants in a certain cause now pending in the district court of the United States, for the district aforesaid, on the chancery side of said court, wherein John D. Bradford and Benjamin M. Bradford are complainants, and the President, Directors, and Company of the Union Bank of the State of Tennessee, and others, are defendants; you are requested, at such certain days and places as you shall appoint, to call and cause the said witness, William Y. Gholson, to come before you, and him diligently examine on oath, confining yourself in such examination, to the interrogatories and cross interrogatories herewith sent,

and his examination, into the district court aforesaid, you distinctly and plainly set, together with this writ enclosed, with all convenient speed.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of June, A. D. 1849, and in the 73d year of the independence of the United States.

[L. S.]

Issued the 22d day of August, A. D. 1849.

G. M. RAGSDALE, *Clerk.*

STATE OF OHIO,
Hamilton county.

Be it known, that, on the 25th day of September, A. D. 1849, I, Thomas M. Key, judge of the commercial court of Cincinnati, caused to come before me, personally, William Y. Gholson, the witness named in the commission from the district court of the United States, for the northern district of Mississippi, hereunto annexed, who being sworn true answers to make to the interrogatories and cross interrogatories attached to said commission and part thereof, deposeth and saith, in answer to the 1st interrogatory:

That he is acquainted with the complainants, and has known them for more than ten years.

2d interrogatory. That he is the same individual mentioned in said interrogatory.

3d interrogatory. I was applied to by letter from William F. Stearns, who in said letter stated that he was acting as attorney for the Union Bank of Tennessee, and after giving a statement of the suit between John D. Bradford and the bank, and my purchase at the tax collector's sale—mentioned in 2d interrogatory, the said letter contains the following proposition: "If, now, for any reasonable consideration, say $100, you will execute a quit-claim deed to the bank for that half section, you can readily conceive that the bank and its counsel will be highly gratified." The said letter stated other matters, but the proposition was in substance as above, and was understood by me as a proposition from the bank [to] convey to it the title I had acquired under the tax collector's sale. The letter referred to contains other matters not connected with this case, but the original marked with my initials, "W. Y. G.," will be transmitted to Mr. Stearns, to be by him produced in court if deemed necessary.

My answer to the proposition made in said letter and above stated is contained in a letter hereunto annexed, marked "A," and in my handwriting; which letter was sent to Mr. Stearns, and has since been transmitted by him to me. In addition to the reasons stated in said letter, marked "A," for not complying with the proposition above referred to, I can only say, from my present recollection, that I purchased the land at the tax sale, supposing it to be the property of John L. Brown, against whom I then held some claim, and thinking it might be necessary to have recourse on said land, but not intending to hold said land

against said Brown under said tax sale; and I think I made this statement to Benjamin M. Bradford, who first spoke to me in reference to this controversy between his brother John D. and the Union Bank of Tennessee. I cannot at this distance of time recollect the statement he made to me of that controversy, but only the impression then made upon my mind—that the time of redemption having expired, that it was a matter of option and feeling with me whether to permit a redemption or not, and that under the circumstances I should feel under no obligations to extend that privilege to the Union Bank; and so, I have no doubt, I then said to Mr. Bradford. I understood from Mr. Bradford that the action of his brother in relation to the matter would be regulated to some extent by the course which I intended to pursue. Having stated to him that course, I did not when I wrote the letter marked "A," and do not yet, feel that I would be justified in pursuing a different one. In saying in said letter, marked "A," that I was induced "to agree, &c.," I did not mean to be understood as having made any contract with Mr. Bradford, but only as having stated to him that I should pursue the course above mentioned, and hold on to such title as I might have.

1st cross interrogatory. I did not act as the agent of the complainants, or either of them, but for myself; as stated in my answer to the 3d interrogatory, I did not know at the time of said sale that either of the complainants had any interest in the matter.

2d cross interrogatory. There was no consideration moving from the complainants, or either of them, to me; I have received nothing and have no promise of any thing from the complainants, or either of them, as an inducement or consideration for my refusal to permit a redemption of said land. I entered into no contract with them, or either of them, about the matter.

And said witness having answered said interrogatories and cross interrogatories, further saith not.

W. Y. GHOLSON.

Sworn to and subscribed before me, and given under my hand and seal, this 25th day of September, A. D. 1849.

THOMAS M. KEY, [SEAL.]
Judge of the commercial court of Cincinnati.

Letter marked "A."

CINCINNATI, *20th March*, 1848.

W. F. STEARNS, esq.

MY DEAR SIR: In relation to the matter of Grigg and Elliot I am willing to do any thing you may think right; act for me as for yourself, and I shall be perfectly satisfied.

As to the other matter mentioned in your letter, I should be induced to accede to your proposition, but I believe I am committed to a contrary course. Some time ago, when I scarcely remember, B. M.

3934.

Bradford stated the case to me, and I was induced to agree to hold on to such title as I might have. I do not now remember the circumstances of the transaction, but I consider myself bound to insist on my title, though I cared then, and care now, but little about the matter. The title, however, is not held for the use of Bradford, and I am under no obligations, and shall not feel bound to let him have the land, even if he has to pay the money.

I am glad you have so far been successful in Niles' case, and wish I could have been there to aid you in the matter.

Truly, your friend,

W. Y. GHOLSON.

Depositions of John M. Bass and James Corry.

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to any judge or justice of the peace of the State of Tennessee, greeting:

Know ye, that, trusting to your fidelity and provident circumspection in diligently examining John M. Bass and James Correy, witnesses on behalf of the defendants in a certain cause now pending in the district court of the United States, for the district aforesaid, on the chancery side of said court, wherein John D. Bradford and Benjamin M. Bradford are complainants, and the President, Directors, and Company of the Union Bank of the State of Tennessee, and others, are defendants; you are requested, at such days and places as you shall appoint, to call and cause the said witnesses, John M. Bass and James Correy, to come before you, and them diligently examine on oath, confining yourself in such examination to the interrogatories and cross interrogatories herewith sent; and their examination, into the district court aforesaid, you distinctly and plainly set, together with this writ enclosed, with all convenient speed.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, [L. S.] at Pontotoc, the first Monday of June, A. D. 1849, and in the 73d year of the independence of the United States.

Issued the 22d day of August, A. D. 1849.

G. M. RAGSDALE, *Clerk.*

Interrogatories to be propounded to John M. Bass and J. Correy.

1st. Are you or not officers of the Union Bank of Tennessee; and if yea, what offices do you respectively hold, and how long have you held them?

2d. State, if you know, whether a sale, made on the 12th of October, 1841, by A. H. Wynne, as the agent of the said bank, to John L. Brown, of section 12, township 7, range 5 east, and section 2, township 5, range 6 east, lying in the Chickasaw cession, in the State of

Mississippi, was made under the authority of said bank, or ratified by it after its officers were informed of said sale.

3d. State, if you know, under what circumstances the complainant, John D. Bradford, obtained from said bank, on the 9th of January, 1845, a title bond for the said lands. Be full, explicit, and circumstantial, in giving the details of the transaction.

4th. Was it supposed or intended by you, when the said title bond was executed, that the transaction was to be a new and independent one, or a continuation of the former liability of the said John D. Bradford?

5th. Upon what grounds, and for what reason, was it that said bank executed said title bond to said John D. Bradford, and took his notes for the purchase money?

Cross interrogatories.

1st. If there was any writing showing the connexion between the contract with John L. Brown, mentioned in the 2d direct interrogatory to you, and the contract with the complainant, John D. Bradford, mentioned in the 3d direct interrogatory, please attach such writing to your answer to this cross interrogatory, and make it a part of the same.

2d. If there was no writing, connecting the two contracts with each other, please state why you connect them together, or give them any relation to each other.

A true copy of the original interrogatories and cross interrogatories on file in this cause.

Test: WILLIAM F. STEARNS, *Sol'r.*

August 22d, 1849.

In pursuance of the annexed commission, directed to any judge or justice of the peace of the State of Tennessee, from the district court of the United States, for the northern district of Mississippi, at Pontotoc, I have caused to come before me, Egbert A. Raworth, an acting justice of the peace for the county of Davidson, in the State of Tennessee, on the 28th day of September, 1849, at the Union Bank of Tennessee, in Nashville, in said county and State, John M. Bass and J. Correy, of lawful age, witnesses on behalf of the defendants, in a certain cause now pending in said district court, on the chancery side of said court, wherein John D. Bradford and Benjamin M. Bradford are complainants, and the President, Directors, and Company of the Union Bank of the State of Tennessee, and others, are defendants; who, being duly sworn according to law, to speak the truth, the whole truth, and nothing but the truth, deposeth as follows:

John M. Bass, in answer to interrogatories propounded to himself and James Correy, states, as to

Interrogatory No. 1. That he is now president of the Union Bank of Tennessee, and that he has held said office by successive annual re-elections since the year 1834.

To interrogatory No. 2, he answers: That a sale, such as is described

in said interrogatory, was made by A. H. Wynne, agent of said bank, to said John L. Brown; which said sale or contract is correctly set forth in the original title bond, executed by said Wynne in his own proper handwriting, which is known to this deponent, and delivered to said John L. Brown; which said title bond, as now cancelled, marked A, is filed herewith as part of this deposition. The said sale or contract, as described in said title bond, was made under the authority of said Union Bank by said Wynne, to whom a power of attorney had been executed, for the general purpose of selling all the real estate of said bank, and was ratified by said bank after said sale was reported to its officers.

To interrogatory No. 3 he answers: That after one, and perhaps two, of the notes, executed by John L. Brown, endorsed by said John D. Bradford under the sale made by Wynne to said Brown, had fallen due, they were forwarded to Mississippi for collection by suit. Suit was brought and judgment obtained, or about to be obtained, against said Bradford, when representations were made to the bank in behalf of said Bradford, that it would be a great hardship upon him to be compelled to pay the purchase money for the land sold to John L. Brown, while said Brown held the title, and he, Bradford, could not sell said land, or in any other way use it *said payment;* that if the bank would extend the time of payment, and permit him to substitute his own notes, with security, in place of those of John L. Brown, that he could get the said Brown to deliver up to the bank the title bond held by him, and a new title bond could be executed by said bank to him, the said Bradford.

It was further stated that Brown was insolvent, and that after the payment of Brown's notes by Bradford, given as the consideration, that then the land could be taken by, or would be subject to, the debts of said Brown, and thereby seriously injure the said Bradford. These representations were laid before the board, and the proposition of the said Bradford agreed to; and, on the 9th January, 1845, the arrangement was consummated by the delivery to the bank of said Bradford's notes, by his friend George W. Foster, esq., and by the delivery to the said Foster of the new title bond to said Bradford, in lieu of the old bond to Brown, which was then delivered up to the bank.

To interrogatory No. 4 he answers: That, when the new arrangement was made with said Bradford, this deponent did not suppose or believe that he was changing the liability or responsibility of either the bank or Bradford; he looked upon it but as an extension of time of payment to Bradford, granted for his own convenience and accommodation. He could not, then, regard it as a new or independent transaction, but as a continuation or renewal of the old contract with Brown.

To No. 5 he answers: That the only reasons why the bank acceded to the proposition of the said Bradford, and executed a new title bond, are to be found in the representations of said Bradford, as contained in the answer to the 3d interrogatory in this deposition. The arrangement was made solely for Bradford's convenience and accommodation, and

to enable him to endeavor to make the money out of the land. Bradford did not pretend to dispute or contest his liability on the notes of John L. Brown, nor was there any doubt in any quarter of Bradford's entire solvency, and of the ability of the bank to make the money out of Bradford's property by means of an execution. The bank never expected to make the money out of Brown, and thought it right and proper to give Bradford a chance to make the best arrangement he could with the land.

Answers to cross interrogatories.

To No. 1 he answers: That he knows of no writing, showing the connexion between the two contracts mentioned, unless certain letters addressed by John D. and his brother, Benjamin Bradford, to George W. Foster, on the subject of his propositions, which were read to the board of directors, are of this character; those letters are not in deponent's possession, and he cannot attach them hereunto.

To No. 2 he answers: That the reason why he connects the two contracts, and considers one as but a continuation of the other, may be found in the circumstances under which the board acceded to said Bradford's request, as set forth in answers to interrogatories Nos. 3, 4, & 5.

JOHN M. BASS.

Title bond marked "A."

Know all men by these presents, that I, A. H. Wynne, of the city of Nashville, State of Tennessee, as attorney in fact for the President, Directors and Co., of the Union Bank of Tennessee, are held and firmly bound unto John L. Brown, of the town of Hernando, in the State of Mississippi, in the penal sum of four thousand five hundred dollars; which payment, well and truly to be made, I, as attorney aforesaid, bind said President, Directors, and Company, and their successors in office.

In testimony whereof I have hereunto set my hand and seal, 12th October, 1841.

The condition of the above obligation is such, that whereas the said Wynne, as atto. aforesaid, has this day sold unto the said J. L. Brown the following described land, to wit, sect. 12, town. 7, range 5 east, in Pontotoc county, and sect. 2, town. 5, range 6 east, in Tishemingo county; and said Brown, having executed his four several notes, with John D. Bradford as endorser thereon of this date, for the following amounts and payable at the following times, to wit, one for $734 $\frac{40}{100}$ dollars, twelve months after date; one for $783 $\frac{70}{100}$, due two years after date; and one for 843 $\frac{80}{100}$ dollars, due three years after date; and one for 897 $\frac{60}{100}$, due four years after date; now, if after all the above mentioned notes, so executed and endorsed, shall have been paid off, said President, Directors & Co., shall make to the said John L. Brown, or his legal representatives, a good and valid title to the above described land, then this obligation to be void, otherwise to remain in full force and virtue, this same day and date above written.

Endorsed on face of bond—cancelled—cancelled.

James Correy, in answer to interrogatories propounded to John M. Bass and himself, states to interrogatory No. 1, that he is now cashier of the Union Bank of Tennessee, and that he has held said office since the 8th of March, 1843.

To interrogatory No. 2, he states, that he has no personal knowledge of the facts therein mentioned, as they occurred before his appointment as cashier.

To the remaining interrogatories and cross interrogatories, he adopts the answers of John M. Bass, as set forth in his foregoing deposition, taken this day in this cause, and makes them his own, as part of this deposition.

JAS. CORREY.

STATE OF TENNESSEE,
Davidson county.

The foregoing deposition of John M. Bass and James Correy were taken before me, Egbert A. Raworth, an acting justice of the peace for the county of Davidson, in the State of Tennessee, at the place and on the day in the caption mentioned, and were written and subscribed by said deponents in my presence; and I further certify, that I am not agent, attorney, or counsel for either party, and that I am no way interested in the event of said suit.

Given under my hand and seal, this 28th day of September, 1849.

EGBERT A. RAWORTH,
Justice of the peace.

Justice's fee $2 00, paid by defendants.

E. A. RAWORTH.

UNITED STATES OF AMERICA,
Northern district of Mississippi.

I, Robert W. Edmondson, clerk of the district court of the United States, for the said district, certify, that the foregoing fifty-five pages contain a true perfect transcript of the original papers and proceedings filed and had in the cause therein stated, as fully and completely as the same remain on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in Pontotoc, this twenty-first day [SEAL.] of September, A. D. 1850.

R. W. EDMONDSON, *Clerk.*